



Thomas E. Strelka
thomas@strelkalaw.com

L. Leigh R. Strelka
leigh@strelkalaw.com

Jacqueline B. Chaffee
jacqueline@strelkalaw.com

N. Winston West, IV
winston@strelkalaw.com

May 11, 2018

Sent Via CM/ECF Filing

Hon. Pamela M. Sargent
U.S. District Court
Western District of Virginia
180 W. Main Street
Room 104
Abingdon, VA 24210

Re: *Hairston v. Royal Building Products*
1:18-cv-0003
26f Report | Discovery Plan

Dear Judge Sargent,

We represent the Plaintiff, Mark Anthony Thomas, in this Title VII racial discrimination matter. Understanding the Court's directive to file a joint Rule 26(f) Plan prior to the telephone conference currently scheduled with you on Monday, May 14, 2018, at 10:30AM, the purpose of this letter is to provide you with detail regarding the relative positions of the parties leading into our forthcoming teleconference. We take the Court's directive very seriously and the parties have worked in good faith to reach an agreement on the factors raised in Rule 26(f) of the Rules of Civil Procedure. Counsel for the parties have exchanged multiple communications regarding the drafting of an agreed plan pursuant to the Rule. At this date, the parties have not reached an agreed plan. The lone sticking point appears to be Electronically Stored Information ("ESI").

Attached is a draft of the Defendant's proposed plan with Plaintiff's proposed additions addressing ESI. Pages 3 and 4 of the proposed plan detail how ESI shall be collected and produced. We have proposed a plan by which the parties would work together to identify custodians of ESI. Following this, the parties would mutually create a list of search terms to be run against databases of the agreed upon custodians. This is a commonly used practice. See *Wagoner v. Lewis Gale Med. Ctr., LLC*, Civil Action No. 7:15cv570, 2016 U.S. Dist. LEXIS 91323 (W.D. Va. July 13, 2016). We have advised counsel for the Defendant that ESI is particularly relevant in this case due to purported text messages that may contain racial epithets.

Counsel for Defendant have produced a plan that includes the following provision regarding ESI:

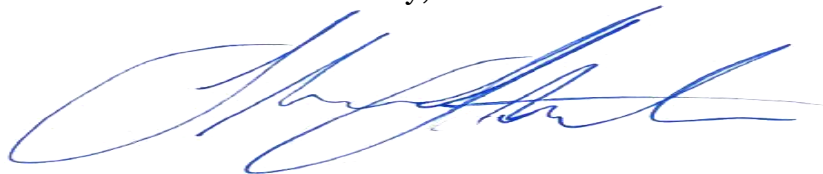
The parties do not expect there to be significant electronic discovery in this case and have agreed to discuss, in good faith, the relevancy, availability, and retrieval of electronically-stored information as necessary throughout the discovery period.

Given the inevitable production of ESI in this case, the Plaintiff thought it best to work out any issues regarding the production through an interactive discourse and plan of action to prevent delay and cost.

We believe that the parties have an obligation to consider and discuss ESI issues during the Rule 26(f) Conference and include agreements related to ESI preservation and production in the Rule 26(f) plan. Rule 26(f) requires parties to meet and confer about “any issues about preserving discoverable information.” Rule 26(f)(3)(C) specifically contemplates any issues surrounding ESI be included in the Discovery Plan. *See Victor Stanley, Inc. v. Creative Pipe, Inc.*, 269 F.R.D. 497, 519-20 (D. Md. 2010) (discussing parties’ obligation to discuss ESI preservation and production during Rule 26(f) conference); Cmts. to 2006 Amendments of Rule 26. The Western District of Virginia, among other courts, endorse the Sedona Conference guidelines regarding the discussion of ESI preservation and production during the Rule 26(f) conference. *See Hanwha Azdel, Inc. v. C&D Zodiac, Inc.*, Civil Action No. 6:12-cv-0023, 2015 U.S. Dist. LEXIS 39329, at *20-*21 (W.D. Va. Feb. 18, 2015) (Ballou, J). The Sedona Conference counsels that the parties agree to ESI production and preservation methods during the Rule 26(f) conference in order to avoid Court intervention in discovery disputes. *See* 18 Sedona Conference J. 152-53.

We look forward to discussing this matter with you on Monday, May 14 at 10:30 AM.

Sincerely,



Tommy Strelka

cc: L. Leigh R. Strelka, Esq.
Joon Hwang, Esq.
Yvette Gatling, Esq.

ENCLOSURE: Plaintiff’s Revisions to Def Proposed Rule 26(f) Report and Plan